

REMARKS

These remarks are responsive to the Office Action, dated April 10, 2007. Currently, claims 1, 3-12 and 14-26 are pending with claims 1, 12, and 22 being independent. Claims 1, 4-6, 8-12, 15-16, 19-20, 22-23, and 26 are amended. The support for these amendments is found at least one page 3, line 8 to page 4, line 22, and on page 10, line 8 to page 11, line 25 of the Applicants' specification. Claims 4-6, 8-11, 15-16, 19-20, 23 and 26 are further amended to correct informalities. Claims 2, 13, 27 and 28 have been previously canceled without prejudice or disclaimer to the subject matter.

Claim Objections

In the April 10, 2007 Office Action, the Examiner objected to claims 1, 4 and 11 as containing informalities. Applicants amended claims 1, 4 and 11 to correct the informalities in the claims. Thus, these objections are now moot. The Examiner is respectfully requested to reconsider and withdraw his claim objections.

Statutory Double Patenting

In the April 10, 2007 Office Action, the Examiner maintained his rejections claim 1, 3-12 and 14-26 under 35 U.S.C. §101 as claiming the same invention as that of claims 1-24 of prior U.S. Patent No. 6,738,354 to Smith (hereinafter, "Smith"). Applicants respectfully traverse these rejections.

Amended claim 1 recites, *inter alia*, a) launching a request message toward the destination node from the source node, the request message including a label availability indication indicative of labels available for use by the source node; b) extracting the label

availability indication from the request message; and c) comparing the label availability indication with a label availability table indicative of labels available for a successive hop between the source node and the destination node, to produce an end-to-end label availability indication.

Claim 1 of Smith patent recites, *inter alia*, a method of label selection for end-to-end transport of label switched traffic through a communications network between a source node and a destination node, the method comprising the steps of: a) launching a request message toward the destination node from the source node, the request message including a label list having one or more label identifiers indicative of respective corresponding labels available for use by the source node; and b) revising the label list at each successive hop between the source node and the destination node, based on labels available for use by each respective hop, to produce a reduced label list. (Smith, claim 1, Col. 7, lines 16-29). Claims of the Smith patent do not recite, *inter alia*, b) extracting the label availability indication from the request message; and c) comparing the label availability indication with a label availability table indicative of labels available for a successive hop between the source node and the destination node, to produce an end-to-end label availability indication, as recited in claim 1 of the present application.

According to MPEP 804:

In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the **same invention** being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. “**Same invention**” means **identical subject matter**. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed

without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. For example, the invention defined by a claim reciting a compound having a "halogen" substituent is not identical to or substantively the same as a claim reciting the same compound except having a "chlorine" substituent in place of the halogen because "halogen" is broader than "chlorine." On the other hand, claims may be differently worded and still define the same invention. Thus, a claim reciting a widget having a length of "36 inches" defines the same invention as a claim reciting the same widget having a length of "3 feet." (emphasis supplied).

As such, claim 1 of the present application and Smith patent do not recite "identical subject matter" and further define embodiments that are not within the scope of one another. (MPEP 804). Thus, the rejection of claim 1 is respectfully traversed. The Examiner is requested to reconsider and withdraw his rejection of claim 1.

Claims 12 and 22 are patentable over Smith for at least the reasons stated above with respect to claim 1. Thus, the rejections of claims 12 and 22 are respectfully traversed. The Examiner is requested to reconsider and withdraw his rejection of claims 12 and 22.

Claims 3-11, 14-21 and 23-26 are dependent from the respective independent claims 1, 12, and 22. As such, claims 3-11, 14-21 and 23-26 are patentable over Smith for at least the reasons stated above with regard to claim 1. Thus, the rejections of claims 3-11, 14-21, and 23-26 are respectfully traversed. The Examiner is requested to reconsider and withdraw his rejections of claims 3-11, 14-21, and 23-26.

No new matter has been added.

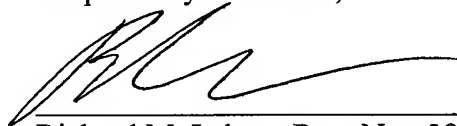
The claims currently presented are proper and definite. Allowance is accordingly in order and respectfully requested. However, should the Examiner deem that further clarification

of the record is in order, we invite a telephone call to the Applicants' undersigned attorney to expedite further processing of the application to allowance.

Applicants believe that no additional fees are due with the filing of this Amendment. However, if any additional fees are required or if any funds are due, the USPTO is authorized to charge or credit Deposit Account Number: **50-0311**, Customer Number: **35437**, Reference Number: **24794-020-CON**.

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Respectfully submitted,



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